

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERMAN AUSTIN,

Petitioner,

Case No. 08-11364

Honorable David M. Lawson

v.

CAROL R. HOWES,

Respondent.

ORDER AUTHORIZING PETITIONER TO PROCEED *IN FORMA*
PAUPERIS ON APPEAL

On March 31, 2008, Sherman Austin filed a petition for writ of habeas corpus and paid the \$5 filing fee. On September 1, 2011, the Court denied his petition. On September 30, 2011, the petitioner filed a notice of appeal. Although the petitioner paid the initial filing fee, the Court will authorize the plaintiff to proceed *in forma pauperis* on appeal from the Court's entry of judgment on the petitioner-appellant's petition for a writ of habeas corpus under 28 U.S.C. § 2254.

The docket indicates that the petitioner paid the \$5 filing fee when he filed his petition in this Court. See 28 U.S.C. § 1914. Therefore, the petitioner is not automatically authorized to appeal *in forma pauperis* under Federal Rule of Appellate Procedure 24(a)(3) and must show that he qualifies for such status. Because the "good faith" requirement of 28 U.S.C. § 1915(a)(3) does not apply to habeas petitions, *Kincade v. Sparkman*, 117 F.3d 949, 951-52 (6th Cir. 1997), this Court may authorize the prosecution of any appeal without the prepayment of fees by a prisoner who shows that he is unable to pay such fees. 28 U.S.C. § 1915(a)(1); Fed. R. App. P. 24(a)(1). The Court finds that the defendant qualifies for *in forma pauperis* status. Therefore, the petitioner's request will be granted.

Accordingly, it is **ORDERED** that the petitioner-appellant is **AUTHORIZED** to proceed *in forma pauperis* on appeal.

s/David M. Lawson

DAVID M. LAWSON
United States District Judge

Dated: October 6, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 6, 2011.

s/Deborah R. Tofil

DEBORAH R. TOFIL